

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #06	CCRB Case #: 202004990	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2020 8:00 PM	Location of Incident: Cadman Plaza West and Pierrepont Street	Precinct: 84	18 Mo. SOL 12/3/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/26/2020 3:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/26/2020 3:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			
3. POM Jan Rogowski	17628	955406	PBBN
4. POM Daniel Castaldo	06682	950173	122 PCT
5. POM Kyle Kelly	12572	967566	C A B
6. POM Frank Russo	14935	966319	C A B

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Mccaffrey	2270	954111	DB FCTF
2. POM Joseph Santangelo	00271	949618	084 PCT
3. CCA Jeffrey Maddrey	00000	899501	C A B
4. POM Michael Hertrich	25789	945821	C A B

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Off. Language: Officers made remarks to individuals based upon the gender of individuals.	
B. Officers	Discourtesy: Officers spoke discourteously to individuals.	
C. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
D. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
E. An officer	Force: An officer struck an individual with a police shield.	
F. An officer	Force: An officer used physical force against an individual.	

Officer(s)	Allegation	Investigator Recommendation
G. An officer	Force: An officer struck § 87(2)(b) with a police shield.	
H. An officer	Force: An officer used physical force against § 87(2)(b)	
I. An officer	Force: An officer restricted § 87(2)(b) breathing.	
J.POM Jan Rogowski	Force: Police Officer Jan Rogowski used a chokehold against § 87(2)(b)	
K.POM Jan Rogowski	Force: Police Officer Jan Rogowski used physical force against § 87(2)(b)	
L.POM Jan Rogowski	Force: Police Officer Jan Rogowski restricted § 87(2)(b) breathing.	
M.POM Daniel Castaldo	Discourtesy: Police Officer Daniel Castaldo spoke discourteously to § 87(2)(b)	
N.POM Daniel Castaldo	Force: Police Officer Daniel Castaldo struck § 87(2)(b) with a baton.	
O. An officer	Abuse: An officer strip-searched § 87(2)(b)	
P. An officer	Force: An officer used physical force against an individual.	
Q. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
R. Officers	Force: Officers used physical force against § 87(2)(b)	
S. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
T. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
U. Officers	Off. Language: Officers made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
V. An officer	Force: An officer struck an individual with a baton.	
W.POM Jan Rogowski	Untruthful Stmt.: Detective Jan Rogowski provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 26, 2020, while being interviewed as a witness in CCRB case # § 87(2)(b) § 87(2)(b) filed this complaint as a reporting witness on behalf of § 87(2)(b) and multiple unidentified individuals. § 87(2)(b) identified § 87(2)(b) § 87(2)(b) and § 87(2)(b) as victims and § 87(2)(b) identified § 87(2)(b) as a victim. This case was placed on the Sensitive Case List due to § 87(2)(b) providing a statement regarding the incident to the New York Times (**Board Review 31**).

On June 3, 2020, at approximately 8 p.m., officers were attempting to disperse the crowd at a protest that was taking place at Cadman Plaza in Brooklyn. Unidentified officers called unidentified protestors “bitch” and used the word “fuck” (**Allegation A – Offensive Language:** § 87(2)(g) and **Allegation B – Discourtesy:** § 87(2)(g)). An officer called § 87(2)(b) a “bitch” and told her to “back the fuck up” and “shut the fuck up” (**Allegation C – Offensive Language:** § 87(2)(g) and **Allegation D – Discourtesy:** § 87(2)(g)). An officer struck an unidentified woman with his riot shield and pushed her to the ground with his hands (**Allegations E and F – Force:** § 87(2)(g)). An officer struck § 87(2)(b) with his riot shield, leg-swept her to the ground, and sat on her back (**Allegations G, H, I – Force:** § 87(2)(g)). As § 87(2)(b) yelled to other protestors to get the officer’s shield number, PO Jan Rogowski of Patrol Borough Brooklyn North placed his arm around § 87(2)(b) neck in a chokehold and pulled him to the ground (**Allegations J and K – Force:** § 87(2)(g)). While on the ground, PO Rogowski knelt on top of § 87(2)(b) which obstructed his breathing (**Allegation L – Force:** § 87(2)(g)). Police Officer Daniel Castaldo of the 122nd Precinct ordered § 87(2)(b) who was recording the incident, to, “Back the fuck up” (**Allegation M – Discourtesy:** § 87(2)(g)) and pushed him backwards using the long side of his baton (**Allegation N – Force:** § 87(2)(g)).

An officer escorted § 87(2)(b) to an MTA bus, which was being utilized to transport prisoners, where an officer pulled forward and looked down § 87(2)(b) shirt (**Allegation O – Abuse of Authority:** § 87(2)(g)). § 87(2)(b) witnessed an officer push an identified woman into the side of the bus (**Allegation P – Force:** § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were transported from the bus to a police van. An audio recording taken by § 87(2)(b) while she was in the van also captures § 87(2)(b) saying that officers called her a “bitch” (**Allegation Q – Offensive Language:** § 87(2)(g)). § 87(2)(b) and § 87(2)(b) saying that he was tackled to the ground by officers who then said, “Get the fuck up” (**Allegation R – Force:** § 87(2)(g)) and **Allegation S – Discourtesy,** § 87(2)(g)).

§ 87(2)(b) who remained at the Cadman Plaza protest after § 87(2)(b) and § 87(2)(b) were taken into police custody, heard an officer say, “Clear the fucking corner” (**Allegation T – Discourtesy:** § 87(2)(g)) and heard several officers say the word “bitch” (**Allegation U – Offensive Language:** § 87(2)(g)). An officer swung his baton in the direction of a crowd. § 87(2)(b) heard someone near him say, “Don’t hit her, she’s pregnant,” though she did not see if the baton contacted anyone (**Allegation V – Force:** § 87(2)(g)). PO Rogowski provided a false official statement to the CCRB (**Allegation W – Untruthful statement:** § 87(2)(g), § 87(2)(g), § 87(4-b)).

§ 87(2)(b) and § 87(2)(b) were charged with disorderly conduct. OCA does not list any results for the charges (**Board Review 27**).

§ 87(2)(b) provided two cellphone videos that he took of the incident, which can be found in IAs #31 and 33. Summaries of the footage can be found in IAs #32, and #34. § 87(2)(b) recorded a cellphone video of the incident that can be found in IA #144, and a summary of the footage can be found in IA #147. PO Rogowski's footage was obtained and can be found in IA #215 and a summary can be found in IA #216.

Findings and Recommendations

Allegation (A) Offensive Language: Officers made remarks to individuals based upon the gender of individuals.

Allegation (B) Discourtesy: Officers spoke discourteously to individuals.

Allegation (C) Offensive Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (D) Discourtesy: An officer spoke discourteously to § 87(2)(b)

Known facts and General Descriptions

§ 87(2)(b) testified that on June 3, 2020, at around 7:30 p.m., he was marching at a protest of about 1,200 people at Cadman Plaza in Brooklyn. The protestors came across a line of officers. After 20 to 45 minutes, the protestors turned southbound on Cadman Plaza West. § 87(2)(b) heard an officer call a black woman who was about five feet six inches tall, heavysset, wearing a purple blouse with her hair in braids in an updo, a "bitch." § 87(2)(b) did not know the woman's name or any contact information for her. § 87(2)(b) described the officer as a white man wearing blue uniform who was six feet to six feet one-inch tall, muscular build, with brown hair but no glasses or facial hair (**Board Review 01**).

§ 87(2)(b) testified that while at the protest, an officer, who she described as a 22 year-old white male who stood 5'8" tall with a medium build and brown hair, said to her "Get the fuck back, bitch" and "Shut the fuck up, bitch." She also alleged that a second officer, who she described as a Hispanic female in her 20s, who stood 5'1" tall with a medium build and brown hair, also said to her, "Shut the fuck up bitch." § 87(2)(b) did not testify to hearing officers calling any other protestor "bitch" (**Board Review 02**). § 87(2)(b) is a 24-year-old Hispanic female who stands 5'1" tall with a slim build and brown hair, and thus does not match the description of the victim that § 87(2)(b) described (**Board Review 03**).

§ 87(2)(b) a friend of § 87(2)(b) provided testimony consistent with § 87(2)(b). She added that officers, who she could not describe, were moving back a crowd of protestors while using the word "bitch" repeatedly (**Board Review 04**).

§ 87(2)(b) did not testify to hearing officers use the word "bitch" (**Board Review 05**).

§ 87(2)(b) did not testify to hearing any officer use the word "bitch" or "fuck." (**Board Review 06**).

BWC and Video Evidence

There is no video evidence that captures these portions of the incident.

NYPD Documents Reviewed

A BADS search for individuals matching the description provided by § 87(2)(b) returned negative results (**Board Review 07**)

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not hear any officer use any profanity, including the word "bitch," and denied doing so himself (**Board**

Review 08).

Officers Interviewed

PO Rogowski, PO Castaldo, PO Kelly, PO Torres, PO Russo, and PO Hertrich all denied using any profanity, including the word “bitch,” and testified that they did not hear any other officer do so. (Board Review 09, 10, 11, 12, 28, 29)

Allegation Recitation and Disposition

Although § 87(2)(b) described the victim, and both § 87(2)(b) and § 87(2)(b) described the officers, the investigation was unable to identify the victims or the officers involved in this allegation. There is no video evidence capturing the allegations and no relevant police documentation identifying the victims or the officers. Lastly, no one interviewed in this case testified to using the word “bitch” nor did they testify to witnessing any officer do so.

§ 87(2)(g)

Allegation (E): Force: An officer struck an individual with a police shield.

Allegation (F): Force: An officer used physical force against an individual.

Allegation (G): Force: An officer struck § 87(2)(b) with a police shield.

Allegation (H): Force: An officer used physical force against § 87(2)(b)

Allegation (I): Force: An officer restricted § 87(2)(b) breathing.

Known facts and General Descriptions

§ 87(2)(b) testified that a group of protesters kneeled in front of a line of officers that had followed them. § 87(2)(b) saw an officer hit a woman downwards in the head, chest, neck, and back with his police shield. This officer also pushed the woman with his hand in a fist, although described it as a push rather than a punch. The woman was about 23 years old, white, heavyset, had blonde or light brown hair, and was wearing a red shirt. § 87(2)(b) did not know her name or have any contact information for her. § 87(2)(b) described the officer as being a white man who was about 22 years old, was five feet eight inches tall, had a slim or muscular build, had blue eyes, was wearing a blue uniform and a helmet, and did not have any glasses or facial hair. § 87(2)(b) did not see any numbers on the officer’s helmet. § 87(2)(b) also described an officer hitting § 87(2)(b) with a police shield, but said it was a different officer from the officer who hit the first woman. He described this officer as being a white man in his late 20s to early 30s who was five feet ten inches tall, had a muscular build, was wearing a blue uniform with a helmet, a shield, and a face mask, and did not have any glasses or facial hair (Board Review XX).

§ 87(2)(b) said that at around 8:35 or 8:40 p.m., she saw an officer push a young woman with his riot shield. The woman fell to the ground. § 87(2)(b) could not describe the woman any further. She described the officer as a white man aged 22 to 25 years old who was between five feet eight inches and five feet ten inches tall, had an average build, had short, light-brown hair, and was wearing a blue uniform. § 87(2)(b) put her shoulder and right upper arm against the officer’s shield to prevent him from hitting the woman again. The officer responded by leaning forward and pushing the shield into § 87(2)(b) knocking her to the ground. She got up, and the officer dropped his shield and pushed her with two open hands while ordering her to get back. § 87(2)(b) stumbled and fell over again, sustaining scrapes and bruises to her knees and shins. § 87(2)(b) got up again and saw that the officer had walked away. She followed after him and said, “Why?” The officer grabbed § 87(2)(b) and wrapped his arms around the front of her torso and attempted to sweep her legs out from under her. The officer lifted her several inches off the ground then dropped her. § 87(2)(b) landed face down on the ground with her arms under her chest. The officer sat

on the center of her back near her chest. § 87(2)(b) felt pressure on her chest although she said she was able to breathe. An officer placed § 87(2)(b) in handcuffs, stood her up, and placed her onto an MTA Bus. She then was transferred to a van that brought her to the 84th Precinct stationhouse where PO Russo issued § 87(2)(b) a summons for disorderly conduct (**Board Review 02**).

§ 87(2)(b) described the woman who was hit with a shield as being white with her hair, which may have been red, in a ponytail, being about five feet tall, weighing approximately 100 pounds, and having a bicycle with her. She described the officer as being a white man in his early 20s with a slim build, between five feet ten inches and five feet 11 inches tall, and wearing uniform with a helmet which did not have numbers on it. Her statement was generally consistent with § 87(2)(b) and § 87(2)(b) regarding the actions taken by this officer. § 87(2)(b) said she did not witness the incident between § 87(2)(b) because she began to have an asthma attack as well as an anxiety attack and was unable to process her surroundings for several minutes. When she next saw § 87(2)(b) § 87(2)(b) was lying on the ground on her stomach in zip-tie cuffs and the officer who had pushed her was on the ground next to her. § 87(2)(b) later told § 87(2)(b) that then officer had pinned her to the ground by kneeling on her back, though § 87(2)(b) did not see this herself (**Board Review 04**).

§ 87(2)(b) statement was consistent with § 87(2)(b) statement (**Board Review 06**). § 87(2)(b) did not testify to witnessing this portion of the incident (**Board Review 05**).

BWC and Video Evidence

Cell phone footage taken by § 87(2)(b) starting at the 01:25 mark of the timestamp, visible at the bottom of the screen, captures PO Hertrich holding a police shield. An unidentified officer to his left pushes his body into PO Hertrich's shield, hitting § 87(2)(b) in the head and shoulders with the police shield. The officer is a white man wearing blue uniform with a helmet. His nameplate and shield are not visible on the recording and the recording does not capture whether he said anything. The officer does not have tattoos (**Board Review 13**).

The BWC footage does not capture this portion of the incident (**Board Review 14**).

NYPD Documents Reviewed

A request for TRI reports returned negative results. A BADS search for individuals matching the description of the unidentified victim returned negative results. (**Board Review 15, 07**)

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not see any officer use force on protestors, including hitting protestors with a police shield, and denied doing so himself. Chief Maddrey did not recognize the officer in the cellphone video taken by § 87(2)(b) (**Board Review 08**).

Officers Interviewed

PO Hertrich, who was identified via the shield number on his helmet in the video, testified that the officer to his left, who he did not know, pushed past him and into PO Hertrich's shield, causing the shield to hit into § 87(2)(b) PO Hertrich did not intend to hit § 87(2)(b) with his shield, and he moved his shield out of the way of the officer shortly thereafter (**Board Review 28**).

PO Russo testified that he did not recall this incident. He acknowledged that he issued a summons to § 87(2)(b) for disorderly conduct but did not recall interacting with § 87(2)(b).

§ 87(2)(b) even after watching the video. PO Russo did not recognize himself or any officers in the video. During the interview, PO Russo showed that he had a full sleeve of tattoos on his right arm (**Board Review 29**).

PO Rogowski, PO Castaldo, and PO Kelly, all officers interviewed for this case regarding other allegations, all denied using any force on the unidentified victim or § 87(2)(b) and testified that they did not see any other officer do so. (**Board Review 09, 10, 11a, 12**).

Allegation Recitation and Disposition

The witnesses to the force used against the unidentified victim all provided varying descriptions of the victim, none of which matched any arrest reports from the location. Additionally, police documents which could have identified either the victim or the subject officer yielded negative results. Lastly, there is no video evidence that captures the interaction between the unidentified victim and the unidentified officer. While there is a video of an officer pushing into PO Hertrich's police shield, hitting it against § 87(2)(b) the video does not capture any identifying information of the subject officer and PO Hertrich did not know the identity of the officer.

Similarly, police documents that could have been used to identify the subject officer for § 87(2)(b) returned negative results. Lastly, PO Russo, the officer that issued § 87(2)(b) a summons, has tattoos on his arm and does not match the physical description of the officer in the video. § 87(2)(g)

Allegation (J) Force: Police Officer Jan Rogowski used physical force against § 87(2)(b)

Allegation (K) Force: Police Officer Jan Rogowski used a chokehold against § 87(2)(b)

Allegation (L) Force: Police Officer Jan Rogowski restricted § 87(2)(b) breathing.

Neither Chief Maddrey, PO Castaldo, nor PO Hertrich recalled witnessing this portion of the incident (**Board Review 10, 11, 28**).

PO Rogowski issued § 87(2)(b) a summons for congregating with other persons in public and refusing to disperse after being given a lawful order. The summons states, "At time and place of occurrence, the undersigned observed the defendant on a public sidewalk, and with intent to cause a disruption, gathered with hundreds of other people. When ordered to disperse, defendant remained at the location by not moving." (**Board Review 16**).

NYPD Patrol Guide, Procedure 221-01 states that when appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of service should consider the following: (**Board Review 17**),

- A. The nature and severity of the crime or circumstances
- B. Actions taken by the subject
- C. The duration of the action
- D. The immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders
- E. Whether the subject is actively resisting custody
- F. Whether the subject is attempting to evade arrest by flight

- G. Number of subjects in comparison to the number of MOS
- H. Size, age, and condition of the subject in comparison to the MOS
- I. Subject's violent history, if known
- J. Presence of a hostile crowd or agitators
- K. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

NYPD Patrol Guide, Procedure 221-01 also states that officers shall not use a chokehold. A chokehold shall include, but is not limited to, and pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air (**Board Review 17**).

The cellphone video shows that the officer who placed § 87(2)(b) under arrest placed his forearm around § 87(2)(b) neck in a chokehold and pulled him to the ground. PO Rogowski testified that he took § 87(2)(b) to the ground and arrested him, but denied placing him in a chokehold. PO Rogowski acknowledged that the video showed an officer using a chokehold on § 87(2)(b) but could not identify the officer. However, PO Kelly, PO Rogowski's partner, identified PO Rogowski as the officer in the video. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Rogowski testified that § 87(2)(b) was given multiple orders to disperse prior to him taking him to the ground and placing him under arrest. However, § 87(2)(b) was only guilty of refusing to disperse – a non-violent crime in which there was no perceived threat of harm. PO Rogowski did not testify to giving § 87(2)(b) a chance to voluntarily comply with the arrest, and instead testified that his first step was taking § 87(2)(b) to the ground – therefore, § 87(2)(b) was not resisting arrest prior to PO Rogowski taking him to the ground. Although there was a large presence of protestors at the location, the evidence shows that there was also a large police presence at the location where § 87(2)(b) was arrested. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Although § 87(2)(b) testified that once he was on the ground, PO Rogowski placed his body on § 87(2)(b) back and neck causing him difficulty breathing, there is no evidence to support this allegation. The cellphone video is obscured by this point and does not show PO Rogowski's positioning on § 87(2)(b). Furthermore, none of the witnesses testified to seeing PO Rogowski on § 87(2)(b) neck or back. § 87(2)(g)

§ 87(2)(b)

Allegation (M) Discourtesy: Police Officer Daniel Castaldo spoke discourteously to § 87(2)(b).

Cell phone footage taken by § 87(2)(b) at the 00:12 mark of the timestamp, visible at the bottom of the screen, shows numerous officers and protestors run toward § 87(2)(b) who is on the ground being arrested by officers. PO Castaldo is standing near the officers who were on the ground arresting § 87(2)(b) and ordering the crowd to back up. At the 00:27 timestamp, PO Castaldo says to § 87(2)(b) "Back the fuck up" (**Board Review 18**).

§ 87(2)(b) statement was consistent with his cell phone video (**Board Review 05**).

PO Castaldo testified that he did not have a recollection of this incident as he was assigned to

numerous protests. Upon reviewing the video PO Castaldo acknowledged that the video appeared to show him telling § 87(2)(b) to, “Back the fuck up,” but maintained that he did not have a recollection of doing so (**Board Review 11**).

NYPD Patrol Guide Procedure 203-09 states that police officers must be courteous and respectful when dealing with civilians (**Board Review 19**). Disciplinary Case No. 2017-17005 states that while officers are allowed to use discourteous language during stressful situations, officers are only permitted to do so when scenes are so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order (**Board Review 20**).

Although PO Castaldo did not have a recollection of this moment, the BWC footage shows that while officers were on the ground and arresting § 87(2)(b) numerous officers and civilians ran over causing a chaotic scene. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (N) Force: Police Officer Daniel Castaldo struck § 87(2)(b) with a baton.

§ 87(2)(b) testified that after PO Castaldo told him to, “Back the fuck up,” he held his baton out lengthwise, holding the top of the baton in one hand and the bottom of the baton in the other hand, and used it to push § 87(2)(b) away from himself. The baton struck § 87(2)(b) in the chest and caused him to fall over but not to sustain any injuries. § 87(2)(b) got up and remained on the corner for about an hour (**Board Review 05**).

§ 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not testify to witnessing this portion of the incident (**Board Review 02, 04, 06, 01**).

Cell phone footage taken by § 87(2)(b) at the 00:24 mark of the timestamp, visible at the bottom of the screen, shows that after PO Castaldo ordered § 87(2)(b) to back up, he approached him. The camera then moves briefly shakes, and when it stabilizes, § 87(2)(b) is standing (**Board Review 18**).

PO Castaldo testified that he did not have a recollection of this incident as he was assigned to numerous protests. PO Castaldo denied pushing anyone at the protest and did not recall if he hit any protestors with his baton (**Board Review 11**).

Chief Maddrey, PO Rogowski, and PO Kelly did not testify to witnessing this portion of the incident (**Board Review 08, 09, 10**).

§ 87(2)(b) testified that PO Castaldo pushed him with his baton, causing him to fall to the ground. The cellphone video recorded by § 87(2)(b) shows that PO Castaldo approached § 87(2)(b) and that § 87(2)(b) camera shook thereafter, but the video does not show the force used nor does it show § 87(2)(b) falling to the ground as alleged. It is unclear to the investigation if the moment captured on the cellphone is the same moment that § 87(2)(b) testified that PO Castaldo used force against him, or if the force was used at a later point not captured on the footage. § 87(2)(g)

§ 87(2)(g)

Allegation (O): Abuse of Authority: An officer strip-searched § 87(2)(b)
Known facts and General Descriptions

§ 87(2)(b) said that after she was handcuffed, a female Hispanic officer in her mid-20s, who stood 5'1" tall with a slim build, transported her to an MTA bus. Outside the bus, the officer pulled § 87(2)(b) shirt collar forward and looked down her shirt. She also rolled down the waistband of her shorts, although § 87(2)(b) underwear was not exposed (Board Review 02).

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) did not testify to witnessing this portion of the incident (Board Review 04, 06, 01, 05).

BWC and Video Evidence

There is no video of this portion of the incident.

NYPD Documents Reviewed

Without knowing the command that the subject officer was assigned to, the investigation could not determine if a strip search was noted in the command log.

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not see any officer strip search § 87(2)(b) (Board Review 08).

Officers Interviewed

PO Torres was the only officer identified as matching the description provided by § 87(2)(b). Although PO Torres is listed on the detail roster (Board Review 21), she testified that she was the cell attendant and denied being at the protest. PO Torres' memo book only lists her as being the cell attendant and has no entries pertaining to the protest (Board Review 22). PO Rogowski, PO Castaldo, PO Kelly are all males and do not match the description of the subject officer. Each officer testified that they did not see any officer strip search § 87(2)(b) (Board Review 09, 10, 11).

Allegation Recitation and Disposition

§ 87(2)(b) testified that the officer who strip-searched her was a Hispanic female in her mid-20s. Although PO Torres matched the physical description of the officer, her memo book listed her as being assigned as the cell attendant. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (P) Force: An officer used physical force against an individual.

Known facts and General Descriptions

§ 87(2)(b) testified that while on an MTA bus that was utilized for prisoner transport, an officer, who he described as a white male in his mid-30s who stood 6'1" tall with a muscular build and brown hair, grabbed a cuffed woman's shoulders and slammed her head face-first into the opposite side of the bus from where § 87(2)(b) was seated, near the rear doors of the bus. § 87(2)(b) could not describe the victim (Board Review 01).

Neither § 87(2)(b) § 87(2)(b) § 87(2)(b) nor § 87(2)(b) testified to witnessing this portion of the incident (Board Review 02, 04, 06, 05).

BWC and Video Evidence

There is no video evidence of this portion of the incident.

NYPD Documents Reviewed

The detail roster for the Cadman Plaza protest was obtained. There are 54 officers listed that match the description provided by § 87(2)(b) (Board Review 30). Without a description of the subject officer or victim, no additional police documents could be reviewed.

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not witness any prisoners on the MTA busses (Board Review 08).

Officers Interviewed

Neither PO Rogowski, PO Castaldo, PO Kelly, PO Hertrich, nor PO Russo testified to witnessing this portion of the incident (Board Review 09, 10, 11, 27, 29).

Allegation Recitation and Disposition

§ 87(2)(b) testified that he witnessed an officer push an unidentified victim into the side of the bus. Although he provided a description of the officer, it was not unique enough of a description to limit the potential pool of potential subject officers. None of the witnesses in this case testified to witnessing this portion of the incident. Lastly, there is no video footage of this portion of the incident. § 87(2)(g)

Allegation (O) Offensive Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

On an audio recording taken by § 87(2)(b) during her transportation to the 84th Precinct stationhouse, at the 00:17:25 mark of the timestamp visible at the bottom of the screen, § 87(2)(b) alleges that an officer repeatedly called her a “bitch”. She does not describe the officer on the recording or state where this occurred (Board Review 23).

Between August 5, 2020 and August 21, 2020, five calls were placed to § 87(2)(b). During the first call a voicemail was left. During the second call, § 87(2)(b) answered and said she wished to speak with her attorney before providing a statement – she also provided a phone number for her attorney. During the third and fourth call, § 87(2)(b) answered and said she had not yet heard from her attorney. During the fifth call a voicemail was left. Between August 21, 2020 and August 28, 2020, three unreturned emails were sent to § 87(2)(b).

Between August 25, 2020 and September 16, 2020, five calls were placed to § 87(2)(b) attorney. During the first call, § 87(2)(b) attorney stated that she wanted to speak with § 87(2)(b) before deciding if she wanted § 87(2)(b) to provide a statement. During the second and third calls voicemails were left. During the fourth call, § 87(2)(b) attorney said she had been unable to reach § 87(2)(b). During the fifth call a voicemail was left.

§ 87(2)(g)

Allegation (R) Force: Officers used physical force against § 87(2)(b)

Allegation (S) Discourtesy: An officer spoke discourteously to § 87(2)(b)

The audio recording provided by § 87(2)(b) at the 00:31:00 mark of the timestamp visible at the bottom of the screen, captured § 87(2)(b) saying that he was at a protest near Ocean Avenue and Flatbush Avenue in Brooklyn [Note: Ocean Avenue and Flatbush Avenue run parallel and he did not specify a cross-street.] and that he ran across the hood of a car to avoid being

arrested but was tackled to the ground by officers. Officers handcuffed § 87(2)(b) then one of them said, “Get the fuck up,” and made no attempt to help him up despite the fact that he was rear-cuffed face down on the ground and was having trouble getting up (**Board Review 23**).

On August 4, 2020, a call was placed to § 87(2)(b). He answered and stated that he was not interested in participating in the investigation.

No further information was available regarding the time or location of his arrest, so the investigation was not able to determine which officers used physical force against § 87(2)(b) or spoke discourteously to him. § 87(2)(g)

Allegation (T) Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation (U) Offensive Language: Officers made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Known facts and General Descriptions

§ 87(2)(b) said that after § 87(2)(b) was removed from the scene, she remained on the northwest corner of Cadman Plaza West and Pierrepont Street and spoke to two women, one of whom was carrying a notebook, who were collecting the names and phone numbers of people who had been arrested. § 87(2)(b) provided § 87(2)(b) name and phone number to these women. They said they would help § 87(2)(b) find legal representation. A group of 50 to 80 officers began running towards the corner from Tillary Street yelling, “Move off the sidewalk!” One officer yelled, “Move off the fucking sidewalk!” § 87(2)(b) described this officer as a white man who was less than six feet tall, had a heavyset build, and was wearing a uniform with a white shirt. § 87(2)(b) also heard multiple officers use the word “bitch,” although she did not see who said it (**Board Review 04**).

Neither § 87(2)(b) § 87(2)(b) § 87(2)(b) nor § 87(2)(b) testified to witnessing this portion of the incident (**Board Review 06, 02, 05, 01**).

BWC and Video Evidence

Video provided to the CCRB related to case § 87(2)(b) captures § 87(2)(b) providing § 87(2)(b) information to a woman wearing a lime green baseball hat (**Board Review #**). The video shows § 87(2)(b) and the woman from behind and does not capture their faces. At the 00:33 timestamp, a white male officer wearing a white shirt and a hat points at the corner where § 87(2)(b) and several other protesters are standing and says, “Clear the fucking corner.” The video is not close enough to this officer to capture his nameplate or shield or the details of his face. A large group of uniformed officers walks towards the sidewalk and ushers the protesters, including § 87(2)(b) away from the corner. The video does not capture any officers using the word “bitch” (**Board Review 24**).

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not hear any officers use curse words or the word “bitch” during the protest. Chief Maddrey did not recognize the officer in the video footage (**Board Review 08**).

Officers Interviewed

PO Rogowski, PO Castaldo, PO Kelly, and PO Torres all denied using any profanity, including the word “bitch,” and testified that they did not hear any other officer do so. (**Board Review 09, 10, 11, 12**)

Allegation Recitation and Disposition

Although this portion of the incident was captured on video, the video is not clear enough to obtain any identifying information of the officer. None of the officer interviewed in this case, including Chief Maddrey, testified to recognizing the officer or witnessing this portion of the incident. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (V) Force: An officer struck an individual with a baton.

Known facts and General Descriptions

§ 87(2)(b) said that after being ordered to move off the sidewalk, she and the rest of the protestors moved south about half a block and into the street, then kneeled and linked arms. § 87(2)(b) was one row behind the front of the crowd towards the west side of the intersection. From about four feet to the left of her, § 87(2)(b) saw an officer swing his asp in the direction of the crowd. She heard someone say, “Don’t hit her, she’s pregnant,” but did not see the asp contact anyone because there was a row of people between her and the officer. § 87(2)(b) described the officer as male and wearing a uniform with a helmet but could not describe him further (Board Review 04).

Neither § 87(2)(b) nor § 87(2)(b) testified to witnessing this portion of the incident (Board Review 01, 02, 06, 05).

BWC and Video Evidence

There is no video evidence of this portion of the incident.

NYPD Documents Reviewed

Without a description of the subject officer or victim, no police documents could be reviewed.

Ranking Officers

Chief Maddrey was interviewed regarding this incident. Chief Maddrey testified that he did not hear see any officers strike protestors with batons and did not do so himself (Board Review 08).

Officers Interviewed

PO Rogowski, PO Castaldo, PO Kelly each testified that they did not see any officer hit protestors with batons and did not do so themselves (Board Review 09, 10, 11).

Allegation Recitation and Disposition

§ 87(2)(b) testified that she did not see the victim and could only describe the subject officer as male in uniform. None of the witnesses in this case testified to witnessing this portion of the incident. Lastly, there is no video footage of this portion of the incident. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (W) Untruthful Statement: Detective Jan Rogowski provided a false official statement to the CCRB.

In his CCRB statement, PO Ragowski stated that he took § 87(2)(b) to the ground and placed him in handcuffs, but denied that he placed § 87(2)(b) in a chokehold. After reviewing the footage, PO Ragowski acknowledged that the video showed an officer placing § 87(2)(b) in a chokehold and taking him to the ground by his back, but he could not identify the officer in the video (Board Review 9).

The cellphone video, starting at the 01:55 mark of the timestamp visible at the bottom of the screen,

shows that one officer grabbed § 87(2)(b) by the neck and took him to the ground (**Board Review 13**). PO Ragowski testified that he took § 87(2)(b) to the ground (**Board Review 09**). Furthermore, PO Kelly identified PO Ragowski as the officer in the video (**Board Review 10**). Given the above, the investigation has determined by a preponderance of the evidence that PO Ragowski is the officer in the cellphone video seen utilizing a chokehold on § 87(2)(b).

A false official statement is an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement was made. A material fact is defined as a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail, Patrol Guide Procedure 203-08(**Board Review 32**).

In DCT Case Number 2016-16097 the court held that in order to prove a false statement, it must be demonstrated that the statement was not only false, but also was not a mere denial of an administrative charge of misconduct. This is in contrast to statements that create a “false description of events” (**Board Review 33**)

Given that PO Ragowski was alleged to have utilized a chokehold against § 87(2)(b) his refusal to identify himself on video is material to the core of the of the inquiry into the alleged chokehold. PO Ragowski testified that he took § 87(2)(b) to the ground and the video shows that only one officer took § 87(2)(b) to the ground, and that the officer did so by utilizing a chokehold. When confronted with the video evidence, PO Ragowski testified that he could not identify the officer in the video. By denying that the video captured himself utilizing a chokehold, PO Ragowski attempted to create an alternative factual scenario in which it was possible that another officer placed § 87(2)(b) in a chokehold. The investigation has determined that PO Ragowski knew that his statement was untrue given the strength of the video evidence, and that he was attempting to cast doubt on what actually occurred.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

